IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No.583 of 2007

Mr.Jeetendra Anthony Fernandes — Petitioner
Vs.
Hathway Cable & Datacom Pvt.Ltd.
and anr. — Respondents

Mr.D.Dwivedi for petitioner.

Mr.Shriram Shirsat i/b. M/s. Navdeep Vora & Associates for resp.no.1.

Mr.P.A.Pol, APP for State.

CORAM: B.H.MARLAPALLE, J.

Reserved on: August 14, 2007.

Pronounced on : August 22, 2007.

P.C.

1. Heard the learned counsel for the respective parties and the learned APP appears for the respondent no.2 - State. The petitioner prays for quashing the proceedings in Criminal Case No.5659 of 2003 filed by the respondent no.1 for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. As per the petitioner he joined a company by name Hathway Investment Pvt. Ltd. and in November 2001 he was transferred to M/s. Hathway Cable &

Datacom Pvt. Ltd., the present respondent no.1. On 26/12/2001 he was granted a personal loan of Rs.50,000/- by the company and an agreement to the same effect was executed between the parties. On the same date he had given a blank cheque bearing No.468376 dated 3rd March 2003 for an amount of Rs.50,000/- and drawn on HDFC Bank and in favour of the respondent no.1 - Company. He left the said Company on 5th March 2003 when his letter of resignation was accepted. It appears the respondent - company deposited the cheque with their Bankers i.e. HDFC Bank, F.C.Road Branch, Pune on 19/4/2003 but the same was returned under the Banker's memo dated 19/4/2003 for the reasons "Insufficient Funds". After giving the statutory notice dated 28/4/2003 the Company filed Summary Criminal Case No.5659 of 2003. The order of process was issued and the same was served on the petitioner on 16/1/2004. He approached the Sessions Court in Criminal Revision Application No.432 of 2006 against the order of issuance of process and the revision came to be dismissed on 31/1/2007. Hence this petition.

3. The statutory notice dated 28/4/2003 was replied by the petitioner through his Advocate on

2/5/2003 and he pointed out that there was no legally enforceable liability of Rs.50,000/- against the dishonoured cheque which was handed over by him to the company only by way of a collateral security. He further submitted that the loan of Rs.50,000/- was to be repaid in 24 equal instalments of Rs.2261/- and that he had already cleared 13 equated monthly instalments and what was remaining to be paid was 11 equated monthly instalments as due on 3/4/2003 onwards.

4. To rebut this contention the company has filed an affidavit and submitted that the petitioner was also granted an additional loan of Rs.23,500/- and a cash advance of Rs.5000/- was converted into loan on 30th April 2002. The petitioner has clarified by way of rejoinder that out of the loan amount of Rs.23,500/- which was to be repaid in 24 EMIs of Rs. 1089/- per month, he had cleared 12 EMIs i.e. from April 2002 to March 2003. However, it is admitted that for the recovery of the balance of the second loan amount the employer has already filed a complaint against the petitioner before the competent court at Ludhiyana (Punjab State). In this petition we are concerned only with the cheque which was given

by way of collateral security against the first loan of Rs.50,000/-. As noted earlier, the petitioner had already cleared 13 EMIs from the first loan and the amount of each EMI was fixed at Rs.2261. Consequently he has cleared an amount of Rs.2261x13 = 29,393/- and he was due to pay the remaining 11 EMIs which amount comes to Rs.2261x11 = 24,871/-. The petitioner has further pointed out that his salary for one month i.e. an amount of Rs.8000/- was due to be paid and it was not paid to him after his resignation. The employer has disputed this and pointed out that the said amount was adjusted against some advance payment. It is, therefore, not necessary to go into this issue of unpaid salary. The fact remains that out of the collateral security cheque the petition has yet to pay an amount of Rs.24,871/- to the employer as of March, 2002.

5. The employer is also entitled for the interest, may not be at the market rate, and, therefore, it would be just and proper that the petitioner pays an amount of Rs.35,000/- as lump sum to the employer. The petitioner says that he has brought the said amount in cash today and the same is hereby directed to be paid to the learned Advocate

for the respondent-employer or in the alternative it could be deposited with the Registry of this court. On payment of the said amount or on its deposit with the Registry of this court, Criminal Case No. 5659 of 2003 shall stand compounded under Section 147 of the Negotiable Instruments Act, 1881. Hence ordered accordingly and the petition stands disposed.

(B.H.MARL